

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	:	MDL Docket No. 01-CV-9000
	:	
INTER-OP HIP PROSTHESIS	:	
PRODUCT LIABILITY LITIGATION	:	JUDGE O'MALLEY
	:	
	:	<u>MEMORANDUM AND ORDER</u>
	:	

The Court held a status conference and motion hearing on September 24, 2001, and documents here certain of its rulings.

- For the reasons stated on the record, and also for the reasons stated in the Court's Order dated Sept. 17, 2001 ("Injunction Order"), the motion by class members Drummer and Spellman for relief from stay (docket no. 85) is **DENIED**.
- Certain interested parties have noted that the Court's Injunction Order works to prevent them from preserving trial testimony in cases where the death of a critical witness appears imminent. Accordingly, the Court hereby **MODIFIES** the injunction entered by the Court in its Injunction order,

to the following extent: a person who has a claim against the “Sulzer Defendants”¹ or their assets that is related in any way to an alleged product defect in Sulzer Orthopedic, Inc.’s Inter-Op acetabular shell hip implant may notice and take a deposition to preserve a witness’s testimony, if there is reason to believe that witness’s health creates an imminent danger of losing that witness’s testimony.

- Certain interested parties have noted that the Court’s Injunction Order works to prevent them from commencing suit, thereby creating a potential statute of limitations problem. To avoid this problem, the parties² have stipulated to the entry of the following Order (and the Court hereby **MODIFIES** the injunction entered by the Court in its Injunction Order, to the following extent): ~~The applicable~~ statute(s) of limitations for any and all persons who have been implanted with an Inter-Op acetabular shell included within the definition of Affected Products shall toll from the date of September 17, 2001, until this Court vacates its Injunction Order.

Any individual whose case is properly venued in a jurisdiction that does not recognize the tolling of a statute of limitations as a legal right under these circumstances shall have the

¹ The Sulzer Defendants are defined to include, for the purposes of this Order: (1) Sulzer Orthopedics Inc. and each of its affiliates, including Sulzer Medica Ltd. and each of Sulzer Medica Ltd.’s other past, present and future parent companies and direct or indirect subsidiaries, together with each of their respective past, present and future directors, officers, affiliates, insurers, employees, customer-physicians (and related hospitals and medical suppliers), and agents, including without limitation, sales agents; and (2) Sulzer AG, a limited company organized under the laws of Switzerland, and all of its past, present and future parent companies and direct or indirect subsidiaries, its and their respective past, present and future directors, officers, affiliates, insurers, employees, customer-physicians (and related hospitals and medical suppliers), and agents.

² Sulzer AG, which continues to dispute this Court’s jurisdiction over its person, has nonetheless made a special appearance before the Court for certain limited purposes, including the purpose of consenting to a tolling of any applicable statute of limitations as to claims against it arising out of the hip implants at issue in this proceeding.

right to immediately commence litigation by the filing of a complaint. All other judicial proceedings in that case are thereafter enjoined, and the defendants in that case shall have thirty days after this Court vacates its Injunction Order to file a responsive pleading. All Sulzer Defendants agree to waive any defenses regarding the timeliness of service of process, provided that: (1) a complaint is filed during the time the Injunction Order is in effect, and (2) service of process is otherwise completed within the time periods prescribed by the applicable rules of civil procedure after this Court vacates the Injunction Order.

- The Court will hold a status hearing on Monday, October 1, 2001, at 3:30 p.m. Pursuant to the Court's Case Management Plan and established organizational structure, only the following plaintiffs' counsel shall attend: Liaison Counsel, Co-Lead Counsel and Class Counsel. Lead and Liaison counsel for the defendants shall also attend. In addition, the Court requests that representatives (either an officer or counsel) from Winterthur Insurance and Sulzer AG be present; defendants' lead counsel shall provide Winterthur and Sulzer AG with notice of this Order.
- The parties are **ORDERED** to notify any interested party of this Order, as soon as and to the fullest extent reasonably possible.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE